

Calendar No. 406

104TH CONGRESS
2D Session

S. 1090

[Report No. 104-272]

A BILL

To amend section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), to provide for public access to information in an electronic format, and for other purposes.

MAY 15, 1996

Reported with an amendment

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To amend section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), to provide for public access to information in an electronic format, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28 (legislative day, JULY 10), 1995

Mr. LEAHY (for himself, Mr. BROWN, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 15, 1996

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), to provide for public access to information in an electronic format, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Electronic Freedom
3 of Information Improvement Act of 1995”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 ~~(a) FINDINGS.~~—The Congress finds that—

6 (1) the purpose of the Freedom of Information
7 Act is to require agencies of the Federal Govern-
8 ment to make certain agency information available
9 for public inspection and copying and to establish
10 and enable enforcement of the right of any person
11 to obtain access to the records of such agencies
12 (subject to statutory exemptions) for any public or
13 private purpose;

14 (2) since the enactment of the Freedom of In-
15 formation Act in 1966, and the amendments enacted
16 in 1974 and 1986, the Freedom of Information Act
17 has been a valuable means through which any per-
18 son can learn how the Federal Government operates;

19 (3) the Freedom of Information Act has led to
20 the disclosure of waste, fraud, abuse, and wrong-
21 doing in the Federal Government;

22 (4) the Freedom of Information Act has led to
23 the identification of unsafe consumer products,
24 harmful drugs, and serious health hazards;

1 ~~(5) Government agencies increasingly use com-~~
 2 ~~puters to conduct agency business and to store pub-~~
 3 ~~licly valuable agency records and information; and~~

4 ~~(6) Government agencies should use new tech-~~
 5 ~~nology to enhance public access to agency records~~
 6 ~~and information.~~

7 ~~(b) PURPOSES.—The purposes of this Act are to—~~

8 ~~(1) foster democracy by ensuring public access~~
 9 ~~to agency records and information;~~

10 ~~(2) improve public access to agency records and~~
 11 ~~information;~~

12 ~~(3) ensure agency compliance with statutory~~
 13 ~~time limits; and~~

14 ~~(4) maximize the usefulness of agency records~~
 15 ~~and information collected, maintained, used, re-~~
 16 ~~tained, and disseminated by the Federal Govern-~~
 17 ~~ment.~~

18 **SEC. 3. PUBLIC INFORMATION AVAILABILITY.**

19 Section 552(a)(1) of title 5, United States Code, is
 20 amended—

21 ~~(1) in the matter before subparagraph (A) by~~
 22 ~~inserting “by computer telecommunications, or if~~
 23 ~~computer telecommunications means are not avail-~~
 24 ~~able, by other electronic means,” after “Federal~~
 25 ~~Register”;~~

1 (2) by striking out “and” at the end of sub-
2 paragraph (D);

3 (3) by redesignating subparagraph (E) as sub-
4 paragraph (F); and

5 (4) by inserting after subparagraph (D) the fol-
6 lowing new subparagraph:

7 “(E) a complete list of all statutes that the
8 agency head or general counsel relies upon to au-
9 thorize the agency to withhold information under
10 subsection (b)(3) of this section; together with a spe-
11 cific description of the scope of the information cov-
12 ered; and”.

13 **SEC. 4. MATERIALS MADE AVAILABLE IN ELECTRONIC FOR-**
14 **MAT AND INDEX OF RECORDS MADE AVAIL-**
15 **ABLE TO THE PUBLIC.**

16 Section 552(a)(2) of title 5, United States Code, is
17 amended—

18 (1) in the matter before subparagraph (A) by
19 inserting “, including, within 1 year after the date
20 of the enactment of the Electronic Freedom of Infor-
21 mation Improvement Act of 1995, by computer tele-
22 communications, or if computer telecommunications
23 means are not available, by other electronic means,”
24 after “copying”;

1 (2) in subparagraph (B) by striking out “and”
2 after the semicolon;

3 (3) in subparagraph (C) by inserting “and”
4 after the semicolon;

5 (4) by adding after subparagraph (C) the fol-
6 lowing new subparagraphs:

7 “(D) an index of all major information sys-
8 tems containing agency records regardless of
9 form or format unless such an index is provided
10 as otherwise required by law;

11 “(E) a description of any new major infor-
12 mation system with a statement of how such
13 system shall enhance agency operations under
14 this section;

15 “(F) an index of all records which are
16 made available to any person under paragraph
17 (3) of this subsection; and

18 “(G) copies of all records, regardless of
19 form or format, which because of the nature of
20 their subject matter, have become or are likely
21 to become the subject of subsequent requests
22 for substantially the same records under para-
23 graph (3) of this subsection;”;

24 (5) in the second sentence by striking out “or
25 staff manual or instruction” and inserting in lieu

1 thereof “staff manual, instruction, or index or copies
2 of records, which are made available under para-
3 graph (3) of this subsection”; and

4 (6) in the third sentence by inserting “and the
5 extent of such deletion shall be indicated on the por-
6 tion of the record which is made available or pub-
7 lished at the place in the record where such deletion
8 was made” after “explained fully in writing”.

9 **SEC. 5. HONORING FORMAT REQUESTS.**

10 Section 552(a)(3) of title 5, United States Code, is
11 amended by—

12 (1) inserting “(A)” after “(3)”;

13 (2) striking out “(A) reasonably” and inserting
14 in lieu thereof “(i) reasonably”;

15 (3) striking out “(B)” and inserting in lieu
16 thereof “(ii)”; and

17 (4) adding at the end thereof the following new
18 subparagraphs:

19 “(B) An agency shall, as requested by any per-
20 son, provide records in any form or format in which
21 such records are maintained by that agency.

22 “(C) An agency shall make reasonable efforts to
23 search for records in electronic form or format and
24 provide records in the form or format requested by
25 any person, including in an electronic form or for-

1 mat, even where such records are not usually main-
 2 tained but are available in such form or format.”.

3 **SEC. 6. DELAYS.**

4 (a) FEES.—Section 552(a)(4)(A) of title 5, United
 5 States Code, is amended by adding at the end thereof the
 6 following new clause:

7 “(viii) If at an agency’s request, the Comptroller Gen-
 8 eral determines that the agency annually has either pro-
 9 vided responsive documents or denied requests in substan-
 10 tial compliance with the requirements of paragraph
 11 (6)(A), one-half of the fees collected under this section
 12 shall be credited to the collecting agency and expended to
 13 offset the costs of complying with this section through
 14 staff development and acquisition of additional request
 15 processing resources. The remaining fees collected under
 16 this section shall be remitted to the Treasury as general
 17 funds or miscellaneous receipts.”.

18 (b) PAYMENT OF THE EXPENSES OF THE PERSON
 19 MAKING A REQUEST.—Section 552(a)(4)(E) of title 5,
 20 United States Code, is amended by adding at the end
 21 thereof the following: “The court may assess against the
 22 United States all out-of-pocket expenses incurred by the
 23 person making a request, and reasonable attorney fees in-
 24 curred in the administrative process, in any case in which
 25 the agency has failed to comply with the time limit provi-

1 sions of paragraph (6) of this subsection. In determining
 2 whether to award such fees and expenses, a court should
 3 consider whether an agency's failure to comply with statu-
 4 tory time limits was not warranted and demonstrated bad
 5 faith or was otherwise unreasonable in the context of the
 6 circumstances of the particular request.”.

7 (c) DEMONSTRATION OF CIRCUMSTANCES FOR
 8 DELAY.—Section 552(a)(4)(E) of title 5, United States
 9 Code, is further amended—

10 (1) by inserting “(i)” after “(E)”; and

11 (2) by adding at the end thereof the following
 12 new clause:

13 “(ii) Any agency not in compliance with the
 14 time limits set forth in this subsection shall dem-
 15 onstrate to a court that the delay is warranted
 16 under the circumstances set forth under paragraph
 17 (6) (B) or (C) of this subsection.”.

18 (d) PERIOD FOR AGENCY DECISION TO COMPLY
 19 WITH REQUEST.—Section 552(a)(6)(A)(i) is amended by
 20 striking out “ten days” and inserting in lieu thereof
 21 “twenty days”.

22 (e) AGENCY BACKLOGS.—Section 552(a)(6)(C) of
 23 title 5, United States Code, is amended by inserting after
 24 the second sentence the following: “As used in this sub-
 25 paragraph, the term ‘exceptional circumstances’ means

1 circumstances that are unforeseen and shall not include
 2 delays that result from a predictable workload, including
 3 any ongoing agency backlog, in the ordinary course of
 4 processing requests for records.”.

5 (f) NOTIFICATION OF DENIAL.—The last sentence of
 6 section 552(a)(6)(C) of title 5, United States Code, is
 7 amended to read: “Any notification of any full or partial
 8 denial of any request for records under this subsection
 9 shall set forth the names and titles or positions of each
 10 person responsible for the denial of such request and the
 11 total number of denied records and pages considered by
 12 the agency to have been responsive to the request.”.

13 (g) MULTITRACK FIFO PROCESSING AND EXPE-
 14 DITED ACCESS.—Section 552(a)(6) of title 5, United
 15 States Code, is amended by adding at the end thereof the
 16 following new subparagraphs:

17 “(D) (i) Each agency shall adopt a first-in,
 18 first-out (hereafter in this subparagraph referred to
 19 as FIFO) processing policy in determining the order
 20 in which requests are processed. The agency may es-
 21 tablish separate processing tracks for simple and
 22 complex requests using FIFO processing within each
 23 track.

24 “(ii) For purposes of such a multitrack sys-
 25 tem—

1 “(I) a simple request shall be a request re-
2 quiring 10 days or less to make a determination
3 on whether to comply with such a request; and

4 “(II) a complex request shall be a request
5 requiring more than 10 days to make a deter-
6 mination on whether to comply with such a re-
7 quest.

8 “(iii) A multitrack system shall not negate a
9 claim of due diligence under subparagraph (C), if
10 FIFO processing within each track is maintained
11 and the agency can show that it has reasonably allo-
12 cated resources to handle the processing for each
13 track.

14 “(E) (i) Each agency shall promulgate regula-
15 tions, pursuant to notice and receipt of public com-
16 ment, providing that upon receipt of a request for
17 expedited access to records and a showing by the
18 person making such request of a compelling need for
19 expedited access to records, the agency shall deter-
20 mine within 5 days (excepting Saturdays, Sundays,
21 and legal public holidays) after the receipt of such
22 a request, whether to comply with such request. No
23 more than one day after making such determination
24 the agency shall notify the person making a request
25 for expedited access of such determination, the rea-

1 sons therefor, and of the right to appeal to the head
2 of the agency. A request for records to which the
3 agency has granted expedited access shall be pro-
4 cessed as soon as practicable. A request for records
5 to which the agency has denied expedited access
6 shall be processed within the time limits under para-
7 graph (6) of this subsection.

8 “(ii) A person whose request for expedited ac-
9 cess has not been decided within 5 days of its receipt
10 by the agency or has been denied shall be required
11 to exhaust administrative remedies. A request for ex-
12 pedited access which has not been decided may be
13 appealed to the head of the agency within 7 days
14 (excepting Saturdays, Sundays, and legal public holi-
15 days) after its receipt by the agency. A request for
16 expedited access that has been denied by the agency
17 may be appealed to the head of the agency within
18 2 days (excepting Saturdays, Sundays, and legal
19 public holidays) after the person making such re-
20 quest receives notice of the agency’s denial. If an
21 agency head has denied, affirmed a denial, or failed
22 to respond to a timely appeal of a request for expe-
23 dited access, a court which would have jurisdiction
24 of an action under paragraph (4)(B) of this sub-
25 section may, upon complaint, require the agency to

1 show cause why the request for expedited access
2 should not be granted; except that such review shall
3 be limited to the record before the agency.

4 “(iii) The burden of demonstrating a compelling
5 need by a person making a request for expedited ac-
6 cess may be met by a showing, which such person
7 certifies under penalty of perjury to be true and cor-
8 rect to the best of such person’s knowledge and be-
9 lief, that failure to obtain the requested records
10 within the timeframe for expedited access under this
11 paragraph would—

12 “(I) threaten an individual’s life or safety;

13 “(II) result in the loss of substantial due
14 process rights and the information sought is not
15 otherwise available in a timely fashion; or

16 “(III) affect public assessment of the na-
17 ture and propriety of actual or alleged govern-
18 mental actions that are the subject of wide-
19 spread, contemporaneous media coverage.”.

20 **SEC. 7. COMPUTER REDACTION.**

21 Section 552(b) of title 5, United States Code, is
22 amended by inserting before the period in the sentence
23 following paragraph (9) the following: “, and the extent
24 of such deletion shall be indicated on the released portion

1 of the record at the place in the record where such deletion
 2 was made”.

3 **SEC. 8. DEFINITIONS.**

4 Section 552(f) of title 5, United States Code, is
 5 amended to read as follows:

6 “(f) For purposes of this section—

7 “(1) the term ‘agency’ as defined in section
 8 551(1) of this title includes any executive depart-
 9 ment, military department, Government corporation,
 10 Government controlled corporation, or other estab-
 11 lishment in the executive branch of the Government
 12 (including the Executive Office of the President), or
 13 any independent regulatory agency;

14 “(2) the term ‘record’ means all books, papers,
 15 maps, photographs, machine-readable materials, or
 16 other information or documentary materials, regard-
 17 less of physical form or characteristics; and

18 “(3) the term ‘search’ means a manual or auto-
 19 mated review of agency records that is conducted for
 20 the purpose of locating those records which are re-
 21 sponsive to a request under subsection (a)(3)(A) of
 22 this section.”.

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Electronic Freedom of*
 25 *Information Improvement Act of 1996”.*

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) *FINDINGS.*—*The Congress finds that—*

3 (1) *the purpose of the Freedom of Information*
4 *Act is to require agencies of the Federal Government*
5 *to make certain agency information available for pub-*
6 *lic inspection and copying and to establish and en-*
7 *able enforcement of the right of any person to obtain*
8 *access to the records of such agencies (subject to statu-*
9 *tory exemptions) for any public or private purpose;*

10 (2) *since the enactment of the Freedom of Infor-*
11 *mation Act in 1966, and the amendments enacted in*
12 *1974 and 1986, the Freedom of Information Act has*
13 *been a valuable means through which any person can*
14 *learn how the Federal Government operates;*

15 (3) *the Freedom of Information Act has led to*
16 *the disclosure of waste, fraud, abuse, and wrongdoing*
17 *in the Federal Government;*

18 (4) *the Freedom of Information Act has led to*
19 *the identification of unsafe consumer products, harm-*
20 *ful drugs, and serious health hazards;*

21 (5) *Government agencies increasingly use com-*
22 *puters to conduct agency business and to store pub-*
23 *licly valuable agency records and information; and*

24 (6) *Government agencies should use new tech-*
25 *nology to enhance public access to agency records and*
26 *information.*

1 (b) *PURPOSES.*—*The purposes of this Act are to—*

2 (1) *foster democracy by ensuring public access to*
3 *agency records and information;*

4 (2) *improve public access to agency records and*
5 *information;*

6 (3) *ensure agency compliance with statutory*
7 *time limits; and*

8 (4) *maximize the usefulness of agency records*
9 *and information collected, maintained, used, retained,*
10 *and disseminated by the Federal Government.*

11 **SEC. 3. PUBLIC INFORMATION AVAILABILITY.**

12 Section 552(a)(1) of title 5, United States Code, is
13 *amended—*

14 (1) *in the matter before subparagraph (A) by in-*
15 *serting “including by computer telecommunications,*
16 *or if computer telecommunications means are not*
17 *available, by other electronic means,” after “Federal*
18 *Register”;*

19 (2) *by striking out “and” at the end of subpara-*
20 *graph (D);*

21 (3) *by redesignating subparagraph (E) as sub-*
22 *paragraph (F); and*

23 (4) *by inserting after subparagraph (D) the fol-*
24 *lowing new subparagraph:*

1 “(E) a complete list of all statutes that the agen-
 2 cy head or general counsel relies upon to authorize the
 3 agency to withhold information under subsection
 4 (b)(3) of this section, together with a specific descrip-
 5 tion of the scope of the information covered; and”.

6 **SEC. 4. MATERIALS MADE AVAILABLE IN ELECTRONIC FOR-**
 7 **MAT AND INDEX OF RECORDS MADE AVAIL-**
 8 **ABLE TO THE PUBLIC.**

9 Section 552(a)(2) of title 5, United States Code, is
 10 amended—

11 (1) in the matter before subparagraph (A) by in-
 12 serting “, including, within 1 year after the date of
 13 the enactment of the Electronic Freedom of Informa-
 14 tion Improvement Act of 1996, by computer tele-
 15 communications, or if computer telecommunications
 16 means are not available, by other electronic means,”
 17 after “copying”;

18 (2) in subparagraph (B) by striking out “and”
 19 after the semicolon;

20 (3) by adding after subparagraph (C) the follow-
 21 ing new subparagraphs:

22 “(D) an index of all major information sys-
 23 tems containing agency records regardless of
 24 form or format unless such an index is provided
 25 as otherwise required by law;

1 “(E) a description of any new major infor-
2 mation system with a statement of how such sys-
3 tem shall enhance agency operations under this
4 section;

5 “(F) an index of all records which are made
6 available to any person under paragraph (3) of
7 this subsection; and

8 “(G) copies of all records, regardless of form
9 or format, which because of the nature of their
10 subject matter, have become or are likely to be-
11 come the subject of subsequent requests for sub-
12 stantially the same records under paragraph (3)
13 of this subsection;”;

14 (4) in the second sentence by striking out “or
15 staff manual or instruction” and inserting in lieu
16 thereof “staff manual, instruction, or index or copies
17 of records, which are made available under paragraph
18 (3) of this subsection”; and

19 (5) in the third sentence by inserting “and the
20 extent of such deletion shall be indicated on the por-
21 tion of the record which is made available or pub-
22 lished at the place in the record where such deletion
23 was made” after “explained fully in writing”.

1 **SEC. 5. HONORING FORMAT REQUESTS.**

2 *Section 552(a)(3) of title 5, United States Code, is*
 3 *amended by—*

4 *(1) inserting “(A)” after “(3)”;*

5 *(2) inserting “(A) through (F)” after “under*
 6 *paragraphs (1) and (2)”;*

7 *(3) striking out “(A) reasonably” and inserting*
 8 *in lieu thereof “(i) reasonably”;*

9 *(4) striking out “(B)” and inserting in lieu*
 10 *thereof “(ii)”;* and

11 *(5) adding at the end thereof the following new*
 12 *subparagraphs:*

13 *“(B) An agency shall, as requested by any per-*
 14 *son, provide records in any form or format in which*
 15 *such records are maintained by that agency.*

16 *“(C) An agency shall make reasonable efforts to*
 17 *search for records in electronic form or format and*
 18 *provide records in the form or format requested by*
 19 *any person, including in an electronic form or for-*
 20 *mat, even where such records are not usually main-*
 21 *tained but are available in such form or format.”.*

22 **SEC. 6. DELAYS.**

23 *(a) FEES.—Section 552(a)(4)(A) of title 5, United*
 24 *States Code, is amended by adding at the end thereof the*
 25 *following new clause:*

1 “(viii) *If at an agency’s request, the Comptroller Gen-*
 2 *eral determines that the agency annually has either pro-*
 3 *vided responsive documents or denied requests in substan-*
 4 *tial compliance with the requirements of paragraph (6)(A),*
 5 *one-half of the fees collected under this section shall be cred-*
 6 *ited to the collecting agency and expended to offset the costs*
 7 *of complying with this section through staff development*
 8 *and acquisition of additional request processing resources.*
 9 *The remaining fees collected under this section shall be re-*
 10 *mitted to the Treasury as general funds or miscellaneous*
 11 *receipts.”.*

12 (b) *DEMONSTRATION OF CIRCUMSTANCES FOR*
 13 *DELAY.—Section 552(a)(4)(E) of title 5, United States*
 14 *Code, is amended—*

15 (1) *by inserting “(i)” after “(E)”;* and
 16 (2) *by adding at the end thereof the following*
 17 *new clause:*

18 “(ii) *Any agency not in compliance with the*
 19 *time limits set forth in this subsection shall dem-*
 20 *onstrate to a court that the delay is warranted under*
 21 *the circumstances set forth under paragraph (6) (B)*
 22 *or (C) of this subsection.”.*

23 (c) *PERIOD FOR AGENCY DECISION TO COMPLY WITH*
 24 *REQUEST.—Section 552(a)(6)(A)(i) is amended by striking*
 25 *out “ten days” and inserting in lieu thereof “twenty days”.*

1 (d) *AGENCY BACKLOGS.*—Section 552(a)(6)(C) of title
 2 5, United States Code, is amended by inserting after the
 3 second sentence the following: “As used in this subpara-
 4 graph, for requests submitted pursuant to paragraph (3)
 5 after the date of the enactment of the Electronic Freedom
 6 of Information Improvement Act of 1996, the term ‘excep-
 7 tional circumstances’ means circumstances that are unfore-
 8 seen and shall not include delays that result from a predict-
 9 able workload, including any ongoing agency backlog, in
 10 the ordinary course of processing requests for records.”.

11 (e) *NOTIFICATION OF DENIAL.*—The last sentence of
 12 section 552(a)(6)(C) of title 5, United States Code, is
 13 amended to read: “Any notification of any full or partial
 14 denial of any request for records under this subsection shall
 15 set forth the names and titles or positions of each person
 16 responsible for the denial of such request and the total num-
 17 ber of denied records and pages considered by the agency
 18 to have been responsive to the request.”.

19 (f) *MULTITRACK FIFO PROCESSING AND EXPEDITED*
 20 *ACCESS.*—Section 552(a)(6) of title 5, United States Code,
 21 is amended by adding at the end thereof the following new
 22 subparagraphs:

23 “(D)(i) Each agency shall adopt a first-in, first-
 24 out (hereafter in this subparagraph referred to as
 25 FIFO) processing policy in determining the order in

1 *which requests are processed. The agency may estab-*
2 *lish separate processing tracks for simple and complex*
3 *requests using FIFO processing within each track.*

4 “(ii) *For purposes of such a multitrack system—*

5 “(I) *a simple request shall be a request re-*
6 *quiring 10 days or less to make a determination*
7 *on whether to comply with such a request; and*

8 “(II) *a complex request shall be a request*
9 *requiring more than 10 days to make a deter-*
10 *mination on whether to comply with such a re-*
11 *quest.*

12 “(iii) *A multitrack system shall not negate a*
13 *claim of due diligence under subparagraph (C), if*
14 *FIFO processing within each track is maintained and*
15 *the agency can show that it has reasonably allocated*
16 *resources to handle the processing for each track.*

17 “(E)(i) *Each agency shall promulgate regula-*
18 *tions, pursuant to notice and receipt of public com-*
19 *ment, providing that upon receipt of a request for ex-*
20 *pedited access to records and a showing by the person*
21 *making such request of a compelling need for expe-*
22 *dited access to records, the agency determine within*
23 *10 days (excepting Saturdays, Sundays, and legal*
24 *public holidays) after the receipt of such a request,*
25 *whether to comply with such request. A request for*

1 *records to which the agency has granted expedited ac-*
2 *cess shall be processed as soon as practicable. A re-*
3 *quest for records to which the agency has denied expe-*
4 *dited access shall be processed within the time limits*
5 *under paragraph (6) of this subsection.*

6 *“(ii) A person whose request for expedited access*
7 *has not been decided within 10 days of its receipt by*
8 *the agency or has been denied shall be required to ex-*
9 *haust administrative remedies. A request for expe-*
10 *dited access which has not been decided may be ap-*
11 *pealed to the head of the agency within 15 days (ex-*
12 *cepting Saturdays, Sundays, and legal public holi-*
13 *days) after its receipt by the agency. A request for ex-*
14 *pedited access that has been denied by the agency*
15 *may be appealed to the head of the agency within 5*
16 *days (excepting Saturdays, Sundays, and legal public*
17 *holidays) after the person making such request re-*
18 *ceives notice of the agency’s denial. If an agency head*
19 *has denied, affirmed a denial, or failed to respond to*
20 *a timely appeal of a request for expedited access, a*
21 *court which would have jurisdiction of an action*
22 *under paragraph (4)(B) of this subsection may, upon*
23 *complaint, require the agency to show cause why the*
24 *request for expedited access should not be granted, ex-*

1 *cept that such review shall be limited to the record be-*
 2 *fore the agency.*

3 “(iii) *The burden of demonstrating a compelling*
 4 *need by a person making a request for expedited ac-*
 5 *cess may be met by a showing, which such person cer-*
 6 *tifies under penalty of perjury to be true and correct*
 7 *to the best of such person’s knowledge and belief, that*
 8 *failure to obtain the requested records within the*
 9 *timeframe for expedited access under this paragraph*
 10 *would—*

11 “(I) *threaten an individual’s life or safety;*

12 “(II) *result in the loss of substantial due*
 13 *process rights and the information sought is not*
 14 *otherwise available in a timely fashion; or*

15 “(III) *affect public assessment of the nature*
 16 *and propriety of actual or alleged governmental*
 17 *actions that are the subject of widespread, con-*
 18 *temporaneous media coverage.”.*

19 **SEC. 7. COMPUTER REDACTION.**

20 *Section 552(b) of title 5, United States Code, is amend-*
 21 *ed by inserting before the period in the sentence following*
 22 *paragraph (9) the following: “, and the extent of such dele-*
 23 *tion shall be indicated on the released portion of the record*
 24 *at the place in the record where such deletion was made”.*

1 **SEC. 8. DEFINITIONS.**

2 *Section 552(f) of title 5, United States Code, is amend-*
3 *ed to read as follows:*

4 “(f) *For purposes of this section—*

5 “(1) *the term ‘agency’ as defined in section*
6 *551(1) of this title includes any executive department,*
7 *military department, Government corporation, Gov-*
8 *ernment controlled corporation, or other establishment*
9 *in the executive branch of the Government (including*
10 *the Executive Office of the President), or any inde-*
11 *pendent regulatory agency;*

12 “(2) *the term ‘record’ means all books, papers,*
13 *maps, photographs, machine-readable materials, or*
14 *other information or documentary materials, regard-*
15 *less of physical form or characteristics, but does not*
16 *include—*

17 “(A) *library and museum material acquired*
18 *or received and preserved solely for reference or*
19 *exhibition purposes;*

20 “(B) *extra copies of documents preserved*
21 *solely for convenience of reference;*

22 “(C) *stocks of publications and of processed*
23 *documents; or*

24 “(D) *computer software which is obtained*
25 *by an agency under a licensing agreement pro-*
26 *hibiting its replication or distribution; and*

1 “(3) the term ‘search’ means a manual or auto-
2 mated review of agency records that is conducted for
3 the purpose of locating those records which are re-
4 sponsive to a request under subsection (a)(3)(A) of
5 this section.”.